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PROBLEMS OF LEGAL EDUCATION REFORM IN UKRAINE

Quality of legal education is always a relevant issue, because of the new challenges and new requirements which emerge in legal professions with the flow of time. Besides, another crucial challenge is the global changes on the labor market which set new requirements to knowledge, competencies and skills of university graduates. These challenges are caused by rapid development of science and technologies and irreversible economic and political processes. This also leads to further broadening of areas in which legal knowledges can be applicable, and correspondingly to further deepening of legal specializations. It is important that law schools follow these developments and swiftly and actively react on them by modernizing approaches to educational processes, updating curricula etc.

Apart from the mentioned global trends and circumstances that make it necessary to modernize legal education as well as access to legal profession, there are problems which are inherent in particular countries. Such problems include corruption in educational institutions and lack of efficient mechanisms to ensure high standards of education. This paper will research on some of these problems and ways of addressing them using the example of legal education in Ukraine.

Problems in legal education system in Ukraine are widely known and actively discussed in Ukrainian society. These discussions received new impetus after reforms to bring Ukraine closer to the EU were launched in 2014. As a result of the respective discussions, in 2016 the Ministry of Education and Science presented the Concept of legal education improvement for professional training of lawyers according to the European standards of higher education and legal profession.¹ Even though the Concept is still a draft, some of its provisions were used for development of draft laws on legal education reform. In September and October 2017 two draft laws on legal education and general access to legal profession were submitted for consideration at the Ukrainian Parliament – Verkhovna Rada of Ukraine. Some provisions of the mentioned draft laws should be further

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¹ Concept is available at: <https://mon.gov.ua/ua/osvita/visha-osvita/koncepciya-vdoskonalennya-pravnichoyi-yuridichnoyi-osviti-dlya-fahovoyi-pidgotovki-pravnika>.

elaborated and the respective committees of Verkhovna Rada are still reviewing them. Nevertheless, prospects of positive Parliament's opinion on these draft laws are very uncertain since almost a year passed from the moment they had been presented and during this time vision of the relevant government offices on the reforming of legal education has changed.

In 2018 the Ministry of Education and Science presented new model of legal education for Ukraine. According to this model, legal education can be obtained through two different branches, one of which will be providing access to regulated legal professions (judge, attorney, prosecutor, notary) while another will open an access to non-regulated legal professions (for instance, paralegal or law school teacher). The initial stage for those who are willing to get legal education provides for 2-year general education program of junior bachelor training. After the completion of this stage, students will get eligibility to enter cross-cutting master in law program, duration of which is 3-3.5 years. Graduates of this program will get diploma and access to regulated legal professions. The important precondition is that to enter this Master program students will have to pass special admission test. The main task of the test will be to identify whether the applicant possesses such crucial for a future lawyer competencies as logical and analytical thinking. Access of such program's graduates to each regulated legal profession will be defined by the respective laws. The other option will be to enter 2-year bachelor program in law instead of master in law program. After graduation from such a program a person will be able either to work in any of non-regulated legal professions or to continue his/her education on a short 1.5-2 years' master program in law as well as master program under another specialty. However, there is discussion on whether graduates of short master programs in law should be able to have an access to regulated legal professions and under what conditions. Initially, it was suggested that graduates of these programs have an access only to non-regulated legal professions. This approach was based on a model of legal education, which has for a long time existed in the United States, where future lawyers at first study on a general (not specialized) bachelor program and then enter a law school through admission test – Law School Admission Test (LSAT). While this model demonstrates its efficiency in the U.S., the potential Ukrainian legal education system based on it might not bring the expected outcomes. It's worth mentioning that current legal education system in Ukraine is based on a specialized legal education, which begins with 4-years' bachelor program in law and for many students continues with 1.5-2 years' master program in law. Thus, the mentioned system significantly differs from the system suggested by the Ministry of Education and Science.

Except the fact that these changes introduce educational system that is radically different from the system, which was formed in Ukraine over decades, several other factors exist which will potentially effect the efficiency of the new system. First of all, the presented model and its division of legal education system

into two branches with different admission procedures is quite complicated. Its introduction demands a lot of investments as well as strengthen control on each stage of legal education (general bachelor program, short bachelor in law program, master programs) since corruption remains the main problem of the higher education system in Ukraine. Division into regulated and non-regulated professions is an innovative step. However, while the task to define regulated legal professions is relatively easy, attempts to define unregulated professions will surely cause complications. In this contest the question arises whether it is reasonable to create separate law education programs, graduates of which will only be allowed to work in non-regulated legal professions (even after a master's degree obtained). In reality it is unlikely that there will be a great number of relevant positions, opened for graduates with access only to non-regulated professions and demand on specialists with this educational level. Having this in mind it is reasonable to ask the question: what is more appropriate – to introduce completely new model of legal education or to improve the existing one to address the challenges, that Ukrainian higher education faces today.

Speaking about problems and challenges making the reform of the Ukrainian legal education a necessity, we shall underline few main issues. The first and foremost problem, which affects the legal education quality a lot lies in disproportionately high number of law schools (law departments) in Ukraine. According to a state register data, there are near 300 educational institutions licensed to award bachelor's and master's degree in law. At the same time, researches demonstrate that de facto only graduates of 130 educational institutions are operate on the labor market² (in comparison, in Poland and Germany the number of law schools is near 40 and even in U.S. their number is not higher than 200). It is obvious that such an incredibly high number of law schools is unsubstantiated, especially given the fact that labor market of legal professions is oversaturated. Besides, law school graduates frequently choose not to build the career in legal profession. According to research conducted by the OSCE Project Co-ordinator in Ukraine in 2009–2010 the surplus of lawyers on a labor market was 400 percent and only one of twelve law school graduates was able to find a job in legal profession.³ Furthermore, it is very difficult to control quality of education processes in a such number of law schools. As a result, overwhelming majority of the Ukrainian law schools fails to create conditions enabling students to gain knowledge, skills and competence of a successful lawyer.

Another problem is a quality of legal education. It is caused not only by lack of appropriate control over the quality of education in unreasonably high number of law schools, but also by use of old teaching methods and techniques. Such

² *Report on the state of legal education in Ukraine*, 2018. Available at: <https://www.osce.org/project-coordinator-in-ukraine/376858>.

³ *Current state of legal education and science in Ukraine (research)*, 2009-2010. Available at: <https://www.osce.org/uk/ukraine/108309?download=true>.

methods and techniques are aimed at studying regulations and providing students with theoretical knowledge. At the same time, the generally accepted and successful practices of other countries demand the application of approaches that aimed at development of practical skills. Clearly that demands not only learning provisions of some law regulations, but also ability to apply them as well as understanding of basic law principles (such as rule of law). For those purposes, it is important to use case-study method, Socratic method and other methods.⁴ These approaches are widely spread in the U.S. law schools since they are a good tool to develop problem-solving skills. However, there are, of course, many other methods and approaches used in legal education in U.S. In American law schools students have opportunities to improve their practical skills in various different ways: through lectures, seminars, individual and team work, simulations (model court hearings, for instance), work in legal clinics.⁵ Examinations are also predominantly aimed at verifying practical problem-solution skills. During exams, which are usually conducted in written form, student gets the description of details of a particular case and his/her task is to analyze these details and solve the case.⁶ This practical orientation of education is based on preferences of professional associations: American Bar Association since 1990s has been defining skills and qualifications of a modern lawyer. Thus, law schools are able to develop their curricula and identify appropriate teaching methods based on information about current requirements to lawyers. Furthermore, the ABA is also authorized to accredit law schools. Such a cooperation between law schools and professional associations of practicing lawyers positively affects quality of legal education.

Poland also demonstrates good attention to legal education quality. For instance, to improve educational processes at the Department of Law and Administration at the University of Warsaw, considerable changes to curricula were introduced. The important step was to acknowledge that current education approaches became outdated and to develop new curricula that will address modern challenges. It made it possible to concentrate on practical component of education and introduce master-classes for small groups of students, during which they are able to develop procedural documents and deal with cases based on real court disputes. Furthermore, students' academic freedom in choosing what to study was expanded. Thus, now there are even more non-compulsory (or non-core) subjects, which students can choose to study, and this allows them to gain more specialized knowledge.⁷

⁴ T. Mann (ed.), *Europäisierung der ukrainischen Juristenausbildung*, Göttingen 2016, p. 147.

⁵ S. Katcher, *Legal Training in the United States*, "Wisconsin International Law Journal" 2006, issue 24/1, p. 371.

⁶ R. K. Neumann, *Legal Reasoning and Legal Writing: Structure, Strategy and Style*, Austin 2009.

⁷ С. Жултек, К. Ю. Ковальська, Впровадження належної практики у сферу вищої юридичної освіти: реформа навчальної програми на факультеті права і адміністрації Варшавського університету, „Право України” 2017, issue 10, p. 110.

Division of subjects in law schools into compulsory and non-compulsory is a common practice in Germany as well. Law schools also pay a great attention to practical component of legal education. That is why, in many law schools students have to provide legal advice in a real cases at legal clinics, participate in mediation, prepare agreements and other legal documents. The main purpose of exams is to verify what practical skills students have gained. That is why during the exam students frequently are tasked to prepare legal advice in a concrete case in writing and then explain orally the circumstances of case and provide legal assessment of them (using provisions of substantive and procedural law). Besides, in Germany law schools moot courts are becoming popular, so students have an opportunity to participate in a court hearings as one of the parties or even judge.⁸

Current situation in Ukraine is a bit different. There are no division into compulsory and non-compulsory subjects since curricula has only compulsory one. Furthermore, many of these compulsory subjects practically do not influence process of formation of knowledge and skills, crucial for a future lawyer. Lectures are one of the most popular form of teaching, but students have no need to prepare for them, because during lectures teacher do not discuss with students controversial or problematic issues of the respective topic, but mostly just shares content of regulations and well-known theories. The other form of training are seminars (conducted in groups). However, this form frequently also appears to be not efficient since students' groups on seminars consist of 20 to 30 persons. Clearly, in such large groups there is always a lack of time during seminars and, thus, many students do not have possibility to express their point of view regarding specific topics. Besides, discussions of problematic and topical issues or dealing with concrete cases frequently are not the main purpose of seminars. It is common practice at Ukrainian law schools, that during seminars students are able to deepen their theoretical knowledge only. On such principles examination of students' knowledge is based, because exams frequently contain theoretical tasks and does not demand solving of cases. As a result, there is no appropriate environment for gaining critical thinking skills, understanding of basic law principles, as well as professional ethics and responsibility. Redress of this situation will demand changes in education approaches together with faculty renewal and specialized training for teachers to share best practices of legal education.

Apart from the exams that are aimed at verifying if students have successfully learned concrete subjects, it is worth mentioning the final exams, passing of which are necessary in order to obtain degree of bachelor or master in law. Till this moment such final exams are the only one form of verification of knowledge and competencies of a future lawyer, since after obtaining a degree graduates are in fact allowed to occupy any kind of law professional positions (though additional examinations, of course, are required for those who are willing to become an attor-

⁸ T. Mann (ed.), *Europäisierung der ukrainischen...*, pp. 138–139.

ney, judge, prosecutor or notary). That is why, quality of final exams is such an important issue. However, such exams usually consist of mainly theoretical issues and do not provide students with opportunity to demonstrate problem-solutions skills, ability to critically evaluate case details and analyze provisions of legal regulations. Furthermore, together with a final exam students who are studying on a master's program have to defend a final thesis. In theory, there are serious requirements as to the quality of text, thesis content, relevance of the topic etc. However, in reality control over the quality of such theses both by a supervisor and law school in general is insufficient. As a result, theses submitted by students frequently have the following problems: usage of outdated or unreliable references; lack of originality in analysis of the topic; citation of sources without appropriate references, that is plagiarism which is absolutely unacceptable and strictly prohibited in academic research.

Another serious problem, which has been already mentioned in the paper is corruption.

The problem of corruption in law schools is exacerbated since in Ukrainian society the legal profession is considered to be very prestigious and highly paid. Until recently all stages of legal education suffered from rampant corruption including admissions to bachelor and master programs, education process and graduation. The introduction of Independent External Evaluation (IEE) in 2008 – standardized tests on various subjects which school graduates pass after graduation – this problem was partially mitigated. Since then admission to bachelor programs in law is based on results of testing in three subjects: history, Ukrainian and English. This procedure substituted the entrance exams on law, history and Ukrainian, transparency and integrity of which were fully controlled by admission commissions in universities. However, students willing to continue their education on master's programs still had to pass entrance exams, controlled by universities' admission commissions. In 2015 this problem was actively discussed and thanks to joint efforts of involved stakeholders the Ministry of Education and Science accepted the idea to substitute current master's programs entrance exams with Independent External Evaluation in Law. In 2016 this procedure was tested in the biggest Ukrainian law schools, which have joined the pilot project of the Ministry. Based on outcomes of this project, in 2017 IEE in Law has become a mandatory procedure for admission to master's programs in all law schools. In 2018 this procedure also became mandatory for entrance to master's programs in international law. In general, this minimized corruption risks at the stage of admission to master's programs in law. Yet, eradication of corruption in education is a task which demands a lot of efforts and time.

At the first sight, foreign languages shall not be priority disciplines in curricula of law schools. However, this is an issue of high relevance for Ukrainian law education system nowadays. First of all, more and more employers set high foreign language proficiency requirements for lawyers because activities of law

firms and organizations gets more internationalized: frequently they have foreign capital and foreign clients. This also demands Ukrainian lawyers to be able to read professional publications in foreign languages. For instance, judgments of the European Court of Human Rights are officially recognized as a source of law in Ukraine. Only a minor share of the ECHR judgements is translated into Ukrainian and hence lawyers shall have sufficient level of foreign languages proficiency in order to use provisions of the judgements in their work. However, the roots of this problems lay in secondary school education system. In law schools English language training shall be aimed at learning special legal terminology, but many students are not capable of this because their foreign language proficiency is inadequate for this task. Moreover, law schools do not pay proper attention to quality of foreign languages training. The results of foreign languages test of the IEE to master's programs in law in 2017 are a vivid example of this situation. In order to pass the foreign language component of the IEE in law a student had to score only 7 points, while the *monkey score* threshold of this test was 9 points. Despite this, most students scored very low points and this fact emphasizes problem of foreign languages training in law schools. To address this problem, it would be appropriate not only to improve training quality, but also to introduce subjects taught in English. One of the good solutions to improve foreign languages skills as well as to understanding of various legal systems by students is students exchange programs such as Erasmus in Europe. Unfortunately, these instruments are not widely used by Ukrainian law schools.

Obviously, it is not possible to solve all these problems by introduction of new model of legal education suggested by the Ministry of Education and Science. Moreover, introduction of such a different model because of its challenges may create additional obstacles on the road of reforming legal education. It is important to keep in mind that to increase efficiency of reform in this field the comprehensive approach shall be used.

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PROBLEMS OF LEGAL EDUCATION REFORM IN UKRAINE

Summary

The paper attempts to study the current situation of legal education reform in Ukraine. The main ideas of the new model of legal education in Ukraine were analyzed. The author made a comparison of Ukrainian legal education system with legal educations practices in United States, Poland and Germany. The main problems negatively influencing the quality of legal education such as corruption, disproportionately high number of law schools and outdated approaches to teaching were described.

KEYWORDS

legal education, Ukraine, teaching approaches, corruption in education, legal education model, Independent External Evaluation, legal profession

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edukacja prawnicza, Ukraina, podejścia do nauczania, korupcja w edukacji, model edukacji prawniczej, Niezależna Zewnętrzna Ewaluacja, zawód prawniczy